Central Law Journal

St. Louis, May 5, 1925

LAW'S DELAYS AND LAWYERS' DELAYS

"In these times of much-heard-of calendar congestion applications of this character (reference being made to motions to restore causes to the Trial Calendar which previously had been marked off) should be scrutinized most carefully and should not be granted unless very good cause is shown. My experience in this court, even though but comparatively brief, has clearly convinced me that the so-called 'law's delays' are not quite so serious as is generally accepted. The approximate 25,000 causes upon the calendar of the court naturally spell congestion, but a great many of these, in my judgment, could well have been disposed of long ere this were the attorneys actually prepared to move to trial. For in moving a calendar, especially a large one, many issues are run across in which either the one party or the other is not in earnest, and by reaching them you force, without the slightest pressure—paradoxical as this may seem—a final disposition. In the trial parts in which I had the privilege of presiding it was rare during these several months when a case was actually ready on both sides, and in the calendar part in which I was permitted to hold it was a very difficult task to get attorneys to move into parts assigned to them for disposition. I am sorry to observe that the difficulty lies more largely with attorneys than it does with the failure of the Court to adequately deal with this immense calendar, and so it is lawyers' delays and not so much 'law's delays,' so-called. * * * *It may suffice if I observe that on one day in particular, of 234 causes upon the calendar, not one was actually ready on both sides.* * * * And what have we here? Indeed, a striking illustration of lawyer's delay in his indefensible failure of diligence, and I argue, if nothing else, the drone must be moved one side"

These timely and vigorous expressions of Justice Levy in his opinion in Harkavy v. Meyers (N. Y. Law Journal, March 23, 1925), where a motion was made to restore a cause to the Trial Calendar and denied, demonstrate forcefully not only one of the principal and hitherto overlooked causes for this serious situation—alleged law's delays—but simultaneously manifest the beginning of a new order of things, the determination on the part of the justices to deal effective blows at any cause which might have a tendency to prevent the acceleration of the wheels of justice. Following fast upon this decision, we find Justice Deledanty, in Bologh v. Fordham Cornice Works (N. Y. Law Journal, March 26, 1925), also denying a motion to restore a cause to the Trial Calendar, citing as authority the reasoning in Harkavy v. Meyers (supra).

Of late much has been written and more said of the law's delays, and the popular opinion of agitation has gained considerable ground that the machinery of the judiciary has completely broken down, that the facilities are inadequate and that the methods of procedure are so cumbersome and so antiquated that parties rightly aggrieved are forced to wait in many instances three years or more before obtaining redress for damages which they may have suffered. Thus, all the blame was leveled at the judiciary, while it seemingly never occurred to those who were most pronounced in their condemnation of the alleged laxity with which the judiciary moved that many of the ills and many of the law's delays are due in large measure to what the vigorous and learned justice in the quoted case very properly chose to connote "lawyers' delays."

The Law Journal is gratified to find that an initial step has been taken toward relieving in some degree the present unsavory condition of the Trial Calendar by a more strict and more rigid application of the rules of procedure in the trial parts

whereby causes will not be restored unless for very valid and convincing reasons. The situation is sad enough when we find that in this county from two to three years often must elapse before a case is reached on the Day Calendar. But when to this long delay is added a further delay of a year or two, which occurs in innumerable instances, by virtue of lawyers' lack of diligence to bring the case to trial, the situation becomes ominous. It is not an infrequent occurrence that lawyers permit cases to drag for months and months for one alleged reason or another, with the result that the already congested condition is aggravated and made more unbearable.

There is no excuse for this. It calls for immediate remedy. The continued conduct on the part of the lawyers compelling so much delay, if not improved by their own action, will unquestionably force the justices sitting in the calendar parts to adopt such rules as will make well-nigh impossible the restoration of a cause for any reason. And what will the result be? Parties litigant will be made to suffer, and while it might appear to be a bit unfair to compel those innocent parties to suffer on their lawyers' account, their condition must give way to "the larger and higher considerations involved in the orderly administration of justice," and in this way greater and more substantial justice ultimately will be worked.

But at present, with approximately 25,000 cases on the calendar, we have justice considerably delayed which is oftentimes tantamount to justice denied, as Mr. Chief Justice Taft has said in these columns. Those who are in the wrong thrive on just such a state of affairs. It is to their advantage to stall off the "judgment day," and with this purpose in view they bend every effort to delay the trial of a case. Lawyers, too, even without pressure from their clients, pursue a policy of "wearing the other man out" by all kinds of contrivances, applications and motions, all of which cause delay and prevent the speedy determination of the cause at issue. Other attorneys, because of the pressure of other legal work, are habitually unable to answer "ready" when their case is reached on the Day Calendar. All these factors combine to present an unhealthy court congestion, which calls for immediate remedy. Only by such action in the way of the Court's refusing to restore cases, except for reasons patently valid, will some relief be gained. A real co-operation between Bench and Bar is required. The Bench has struck the first blow. Justice Levy has blazed the trail. Let the Bar now respond adequately and effectively.—New York Law Journal.

NOTES OF IMPORTANT DECISIONS

NEW YORK ARBITRATION LAW ENFORCED IN ENGLAND.—The Court of Appeal of England, in Bankers & Shippers Ins. Co. v. Liverpool Marine & General Ins. Co. (N. Y. Law Journal, March 4, 1925), an action arising under the New York Arbitration Law, held as follows:

"Where a contract provided for the arbitration of disputes and also provided 'in default of either party appointing any arbitrator within one month of the other party requesting it to do so, the latter shall name both arbitrators, and they shall elect an umpire as above stipulated,' and one of the parties, due to the other's default, named both arbitrators, the defaulting party could not revoke the authority of the arbitrators.

"Where a contract within itself contains a provision for the appointment of the board of arbitration and the means of such appointment is within the power of the parties, no recourse to the court is necessary under Section 3 of the Arbitration Law.

"Where Section 3 of the Arbitration Law provides: 'A party aggrieved by the failure, neglect or refusal of another to perform under a contract or submission, providing for arbitration, described in Section 2 hereof, may petition the Supreme Court or a judge thereof for an order directing that such arbitration proceed in the manner provided for in such contract or submission,' there is no aggrieved party so long as the contract itself provides other means of taking care of a default.

"When the Legislature adopted Section 2 of the Arbitration Law rendering provisions for the arbitration or submissions of controversies 'valid, enforcible and irrevocable, etc.,' the Legislature introduced a fundamental change in the existing law and destroyed the right of either party to revoke the authority of an arbitrator designated in strict accordance with the contract.

"An award obtained in New York in strict accordance with the arbitration provisions in a private contract will be enforced in England, notwithstanding that one of the parties attempted to revoke the authority of the arbitrators and refused to participate in the arbitration proceedings."

STATUTE REQUIRING AUTOMATIC LOCOMOTIVE FIRE BOX DOORS INVALID AS TO LOCOMOTIVES IN INTERSTATE COMMERCE.—A statute of Georgia (Laws Ga. 1924, p. 173) requiring railroad steam locomotives to be equipped with automatic fire box doors, is held in Atlantic Coast Line R. Co. v. Napier (Dist. Ct.), 2 F. (2d) 891, to be invalid as to locomotives engaged in interstate commerce, the Court in part saying:

"The defendants contend that Congress has not, by its legislation, dealt with fire doors; that the function of the commission is but to approve the kind of locomotives and appurtenances that the carriers have put in use and to see that they, such as they are, are kept in proper and safe condition, and that it has no authority to require other and different types of locomotive or other or different equipment; and, if the commission has the power to require fire doors, it has not exercised it, and that the field of legislation thus left open may be occupied by the States; and that, especially in the exercise of its police power the State, for the safety and health of its citizens, may make requirements which are not repugnant to any constitutional act of Congress. These contentions cannot prevail here. It is settled that legislation for the safe equipment of railroad engines and cars used by interstate carriers is within the congressional power to regulate interstate commerce. The same matter may also be within the reserved police power of the States. But the state statute here in question, concerning itself solely with the locomotives of railroad companies, seems more clearly a regulation of commerce than a police regulation for the good of the general public. The case to that extent differs from that of Atlantic Coast Line v. Bahnsen (D. C.), 300 F. 233. But, whether it be an effort to regulate commerce by acting on its instrumentalities or an exercise of police power, the state statute as applied to the locomotives of carriers engaged in interstate commerce finds the field fully occupied by paramount federal legislation. By the enactments of 1915 and 1924 above referred to Congress has required of such carriers the use of locomotives in proper condition and safe to operate in all their parts and appurtenances, and authorized the commission, by rules and regulations, to fix the standard of safety and propriety."

PLAINTIFF NEED NOT SUBMIT TO X-RAY PHOTOGRAPHY FOR DEFENDANT.—A New Jersey statute provides as follows:

"On or before the trial of any action brought to recover damages for injury to the person, the Court before whom such action is pending may from time to time on the application of any party therein, order and direct an examination of the person injured as to the injury complained of by a competent physician or physicians, surgeon or surgeons, in order to qualify the person or persons making such examination to testify in the said cause as to the nature, extent and probable duration of the injury complained of; and the Court may in such order direct and determine the time and place of such examination; provided, this section shall not be construed to prevent any other person or physician from being called and examined as a witness as heretofore."

It is held by the New Jersey Supreme Court, in Andrus v. Fornfara, 127 Atl. 788, that such statute does not require the plaintiff in a personal injury action to submit to the taking of X-ray photographs at the request of defendant. The Court said:

"We are also of the opinion that we should not direct that X-ray photographs of the plaintiff be taken for the defendant. X-ray photographs sometimes result in the subject being seriously burned. In the case of Boelter v. Ross Lumber Co., 103 Wis. 324, 79 N. W. 243, the plaintiff had submitted to an examination by the X-ray process, and had been burned. The Court refused to compel a second examination by such a process, and this was held not to be an abuse of the discretion of the Court. In our opinion the only examination which this Court should permit and order is an examination without excision or the right to take X-ray photographs."

THE PART NEWSPAPERS PLAY IN THE ADMINISTRATION OF JUSTICE*

One of the very encouraging signs of the times is the attention being given to the newspaper as a factor in the administration of justice. With the development of modern newspaper methods in this country, dating from the late nineties, the press came to occupy a much more important role in this field than formerly. For twenty-five years or more certain newspaper practices have been condemned and deplored, not only by conservative lawyers, but equally by sensible and informed laymen in all walks of life. Journalists themselves have condemned obvious excesses, mainly by refusing to compete along lines calculated to misinform the public and to embarrass judges, prosecutors and other officers of justice.

The conduct of newspaper men which calls for criticism is of the most vital civic and social consequence; it would be difficult to exaggerate its importance. This is true notwithstanding the fact that only a few individuals and a few papers are guilty of these practices. Any broad survey of the press of the country reveals the encouraging fact that outside of the larger cities there is little cause for complaint, and the occasional instances of improper conduct may be attributed to a tendency to imitate metropolitan practices or to the personal grievances of newspaper owners and editors. Except in the larger cities the evil is one not deeply rooted. It may be expected to yield to any movement which is conducted in a reasonable and tactful spirit.

A strong reason for satisfaction exists because the growing consideration which the bar is giving this matter indicates that the bar is coming finally to realize its own duties and responsibilities more keenly and more practically than heretofore. If, in the nineties, the bar of the country had possessed that cohesion and organization which it should have possessed for the good of itself and of the Republic it would have found means for preventing press insurgence from overstepping lines of propriety in its relations with the courts and the ministers of justice.

But at the time when this evil began there was no bar in an organic sense; there were only a number of lawyers, which is quite a different thing. In the past fifteen years the bar, as such, has been in process of formation. The evolution toward professional integration has not yet progressed very far, but far enough, fortunately, to make possible certain kinds of public service heretofore impossible, and among them consideration of this matter of newspaper participation in the administration of justice. At least a start has been made in a study and a movement which must necessarily be carried on for a long time. That there will be ultimate benefits from such work cannot for a moment be doubted.

The report of the Survey of Criminal Justice in Cleveland contains the first notable study of this matter (1922). Part VII of the report is entitled Newspapers and Criminal Justice, and is edited by M. K. Wisehart. It occupies forty pages, following page 515. A valuable summary of conclusions, written by Prof. Felix Frankfurter, appears as chapter I. The advantages possessed by the Cleveland investigators is set forth in the preface in these words: "The Cleveland investigators were wholly indifferent to all Cleveland personalia. Neither past entanglements nor future embarrassments influenced in the slightest the scope of the inquiry or its thorough pursuit."

The reaction of the bar to this situation came two years later. The Chicago Bar Association had created a committee on Relations of the Press to Judicial Proceedings. Its chairman, Andrew R. Sherriff, delivered a lecture on Newspapers and the Courts at the Medill School of Journalism of Northwestern University on February 28, 1924. On May 1, Henry W. Taft ad-

*This very interesting article is reprinted from the February number of the Journal of the American Judicature Society, with omission of some paragraphs, which was necessary to get it into the limited space of our columns.

dressed the Association of the Bar of the City of New York on The Press and the Courts and on May 14, Guy A. Thompson, President of the Missouri State Bar Association, presented What the Lawyer Wishes from the Newspaper to the Missouri Press Association and the School of Journalism of the University of Missouri.

Meanwhile the subject had been chosen for the program of the Conference of Bar Association Delegates and an entire afternoon was devoted to it at Philadelphia on July 7. Charles A. Boston introduced the subject. The principal speakers were Dr. Talcott Williams, Director Emeritus of the Pulitzer School of Journalism, Columbia University, and Casper S. Yost, President of the American Society of Newspaper Editors and editor of the St. Louis Globe-Democrat. Walter F. Dodd and Wilson M. Powell discussed the principal papers and a number of delegates participated informally. The meeting is reported with some particularity in the November, 1924, number of the American Bar Association Journal, pages 816 to 820.

The officers of the conference hoped that the discussion led by conspicuous members of the press would mark the beginning of co-operative efforts between the bar and the press looking to a mutual agreement and helpful efforts. Imbued with this idea the delegates present adopted the following resolution:

"Resolved, That it be the sense of this Conference that the professions of law and journalism have in common certain high duties of a public character, which can better be performed if the two professions are brought into closer official contact. Through mutual helpfulness there can come about a better understanding of the functions of the two professions and the ethical conceptions which should govern the conduct of their members. To that end, be it

Resolved, That the chairman be authorized to appoint a committee of five on co-operation with the press, whose duties shall be to confer with a committee of the American Society of Newspaper Editors, if one be appointed, and with any other committee of the press and the bar authorized to deal with this subject, such committee to report back at the next meeting of the Conference of Bar Association Delegates a program of co-operation between the bar, the bench and the press."

The hope expressed in the resolution has been temporarily frustrated by the refusal of the American Society of Newspaper Editors, at the annual meeting held in January, 1925, to accept the proffered relationship. The action so taken marks a step in the movement and will be given consideration necessarily in plans which may be made.

Mr. Yost's paper read at the conference meeting shows a disposition to minimize the importance of the evils concerning which complaint is made against the press.

The greater part of his address is devoted to the shortcomings of the law, the courts and the bar. Its most significant part is where it virtually pledges co-operation and aid on the part of the press in furthering the efforts of the bar to secure remedial legislation and generally to clean house.

It appears then that President Yost believes that his profession cannot benefit in solving its own ethical problems by co-operating with the bar, but recognizes its opportunity to render public service in the wide field of reform of judicial procedure, judicial selection, legal education and similar matters.

Mr. Dodd concurs in President Yost's statement that the mass of criticism should be directed against a relatively small number of newspapers, but makes this salient point:

"Cases in which newspaper comment may be improper are few in number, and on the whole there is no great difficulty in the smaller communities. But in the larger cities there are always one or two cases in prospect or in progress in which there is the spectacular or the unusual. In spectacular and sensational cases, both civil and criminal, the judge and the lawyers have become actors in a melodrama with an audience as broad as the publicity of the trial. Such cases are not numerous, but in every great city one such case is, at substantially all times, under discussion by the

press. For this reason these spectacular cases are of an importance out of proportion to their numbers."

Dr. Talcott Williams limited his consideration to the difficulties experienced by newspaper reporters in getting courtroom news and proposed that every court should be provided with an additional salaried officer who would be both lawyer and writer and whose duty it would be to report every case, so that editors would have authentic reports for their use.

To show the impracticability of this plan it may be in order to consider what the newspaper seeks in court news. Newspapers had their rise in the need of individuals to keep informed, to get factual reports. The commercial and financial pages today illustrate that early form of reporting. The use to which the newspaper was subsequently bent as a political medium brought to it a larger segment of the public as readers. Even then, at a time, say fifty years ago, only a minority of the entire population found matters of genuine personal interest in newspapers. Interest in the strange things in human life, things appealing to the emotions, was catered to largely by weekly papers and cheap novels. It was inevitable, though, that actual happenings, when dressed up with the novelist's art, should eventually fill this almost universal human need more directly and more fully than fiction.

For a number of years now the collecting and publication of news has tended, in certain of the most widely read newspapers, to be subordinate to the virtual fabrication, from slight facts, of "human interest stories." Such papers may be said to be purveyors of sensation more than of news.

• • • •

It is where this function of the newspaper, as a purveyor of sensation, becomes a prejudicial factor in the administration of justice, that our condemnation falls.

There is a tendency on the part of lawyers and many serious laymen to overlook the fact that the enforcement of law discloses the largest body of sensations. Foreign wars and distant famines and plagues are old stuff. Domestic calamities must be unique to flag jaded appetites for sensation. Crowded railway coaches plunged into icy rivers, the collapse of airplanes, swift death on the streets are too common to grip the attention of the mass of daily feeders on sensation. These isolated accidents are not drama because they lack continuity. But the murder sensation and to a lesser degree the conspiracy of officials or of men in fiduciary positions become continued stories with fresh disclosures daily.

• • • •

Editors Must Control Situation—In the foregoing an attempt is made to explain rather than to accuse or to excuse. It is idle to ask papers to ignore a great human craving which they are better fitted to cater to than any other human agency. Newspapers have a unique power in that they serve certain practical and necessary purposes of modern life more efficiently than any other means and further that they play a large role in all social and civic fields. For that reason we say that they are impressed with a public use. And it is entirely reasonable to argue to editors that self-imposed limits upon the use of sensation is necessary to the welfare of the press. The fact that regulation by arbitrary law would be more likely to produce new evils than to correct existing ones does not mean that there is no recourse. The ultimate remedy lies in the control of the situation by the editors themselves through the development of professional standards, professional ethics and professional solidarity.

That the papers only print what the public wants is an empty retort to criticisms because it can be employed just as well by the vendors of narcotics.

It is neither the duty nor the proper function of the bar to seek to curb the publication of fantastic literature, but it is the duty and the function of the bar to declare that in the handling of matters within the field of judicial administration the press shall not misrepresent, impede,

exaggerate, forestall, degrade or otherwise improperly deal with this essential function of government.

Nor does the duty of the bar stop with this negative attitude. It is equally the duty of the bar to engage the press in sympathetic co-operation with its own constructive aims. This thought will be developed more fully at a later stage of this discussion.

The vast sale of papers to persons who could not be interested in any part except the "human interest story" seems to prove beyond question that the editors know what a considerable proportion of the public want. And hence their need to forecast events, to discuss guilt before arrest, to present testimony long before witnesses are subpoenaed. And this need calls for handling officials so as to serve the daily needs of the papers. A paper that cannot get hints and information from the police and the prosecutor is at a great disadvantage. These officials are fundamentally politicians. They have information to swap for publicity. The exchange of favors between officials and papers is fairly continuous. Compliant officials receive more support than others when they are candidates.

Dr. Williams' proposal for trained and salaried reporters in the courts would not have the slightest effect, one way or the other, on the essential evil which the bar is now gathering strength and courage to attack.

It seems strange that so distinguished and so experienced a journalist as Dr. Talcott Williams did not hit upon the obvious solution of the difficulty which the newspaper is supposed to have in presenting a veracious account of courtroom happenings. In every celebrated case the paper has its reporter in the courtroom. If he cannot grasp the legal significance of what he sees and hears he should be able to consult one of the newspaper's lawyers promptly, just as a bank teller gets an opinion in a few minutes on a doubtful endorsement from the bank's lawyers. When it comes to editorial comment on decisions, reliance is commonly had upon the newspaper's legal staff and it is owing to that practice that there is virtually no criticism by the bar of the quality of these critiques. A lawyer will frequently notice that a certain editorial has been written by a lawyer, though the lay reader may ascribe it to a supposed all-embracing wisdom of the sanctum.

* * * *

We shall endeavor to present some of the specific evils complained of and hope that a more complete and precise statement will before long be formulated. Criticism that is not specific is subject to suspicion. In many instances a mere declaration of principle is all that is needed to provide a standard that most editors will endeavor to comply with of their own volition. Doubtless, in many instances the breaches of decorum of which the judicious complain have been due to the fact that editors have merely followed examples set by the leaders in sensational writing in the absence of any standard or any authoritative and guiding criticism.

Editors are at least as keen as any other class. They have corrected many abuses because of patriotic loyalty, or the dictates of self-respect or self-interest. Witness the wholesome and revolutionary reform in regard to the publishing of patent medicine advertising which was brought about in a short time after the medical profession became integrated and so capable of assuming its great public function. The press sacrificed vast receipts to play its worthy role in this matter. This instance is only one of many that could be told.

So in presenting an indictment against the press we should first caution readers to bear in mind these facts: (a) only a relatively small number of papers have offended, (b) the bar and the bench have not heretofore offered constructive criticism, and (c) in most of the instances deserving complaint some laywer or judge either connives at the evil or actually instigates it for his own supposed benefit.

A consideration of these qualifying facts will be found to make the desired reform appear far less remote than at first glance.

Flippant Treatment of Courts—Possibly the most common failing on the part of reporters and news editors lies in gaining human interest for their court items by writing in a flippant style. The temptation is very strong. Occurrences which would engage nobody's attention out of court are curious or comical in the courtroom for the same reason that a cat strolling down a church aisle during service appears irresistibly funny. It is the solemn background which by contrast makes a trifling remark interesting in a trial.

Admitting the appeal of the subject it may yet be said that the distinction between propriety and abuse is easily made. Lawyers and judges are repositaries of comic situations occurring in trials which may be printed without bringing the ministers of justice into contempt or making them ridiculous. A slight difference in the phrasing may bring the judge and with him his court to the level of buffoonery, and quite without warrant in fact.

In commenting upon this very common failing, Mr. Andrew R. Sherriff may be quoted:[1]

"The ordinary methods of newspaper reporting of cases in court, with references to judges, lawyers, parties and incidents of the proceedings, show a need of study of the subject from the standpoint of public welfare, and have a generally baleful influence on the administration of public justice. It is naturally of first concern to the publishers of newspapers to make them interesting to the casual reader wishing to be amused rather than to be educated. So anyone assuming to criticize newspaper style cannot advocate the introduction of things technical or pedantic. Yet reporters in touching matters involved in the administration of public justice are dealing with a subject which is in fact sacred. The temptation to show the sensational or ludicrous side is always present, and in the usual state of the reporter's mind it seems to be irresistible. But I come to say to you, that in thinking, you will see that it ought to be resisted, and a distinction made between proceedings in a court, and occurrences in the street, or at a vaudeville show, or a prize fight. Such a distinction is observed by the newspaper profession in dealing with the churches and their matters of religion; and I assert, for you to think about, that there is no less reason for its observance in dealing with the courts and their duties of administering human justice, which is very closely akin to sound religion."

(1) Newspapers and the Courts. a lecture given at the Medill School of Journalism. Northwestern University.

In the same address Mr. Sherriff touches on the efforts of reporters to make reports of divorce cases spicy, quoting from the letter to him of an unnamed judge as follows:

"There is one phase of this subject to which your report does not refer and to my mind it is a phase in which the press most frequently offends, and that is their attitude toward divorce hearings. Their attitude is too well known to need any comment from me. The question of divorce is held far too lightly at best and the flippant and would-be humorous accounts of such cases on trial, by the press, tends in the same direction. The press can be a very potent agency for good in this matter, rather than for harm, if they would not only refrain from emphasizing and playing up such comedy as they may see in the cases as they are heard, but if they will emphasize the horror and the tragedy that is in such cases in abundance. Such a treatment of that subject, by the press, would be conducive to a soberness of thought on that subject by the press-reading public rather than the very undesirable attitude which is now fostered in their minds, by the treatment which the press gives to these matters."

* * * *

"Trial by Newspaper"—It is in the field of criminal prosecutions that the greatest reform lies. Newspaper improprieties here extend all the way from the initial report of the crime to the final editorial comment upon the result of the verdict and sentence. It is often an easy matter to create the impression before an arrest has been made that some person obnoxious to certain interests or unpopular in the community is to be suspected of guilt. In what is best characterized as "trial by newspaper," for lack of a more

precise and inclusive phrase, innocent persons have often been hounded unjustly and unmercifully. It offers an opportunity not easily resisted for the punishing of enemies. In the case of the assassination of a high public official there has been more than once an apparent effort on the part of writers to fix blame on a political party when the crime is obviously individual and due to psychopathic causes. Agitators for unpopular causes stand in danger of being held responsible for crimes of which they are innocent and sometimes such a crime is used as a means for punishing a person who appears to deserve punishment for other offenses or "on general principles," as in the shameful Mooney case in San Francisco.

When an inflamed public opinion and the machinery of justice can be employed to punish the meanest person in the community without due process of law, we enter upon a route which leads toward the breaking down of government and society —toward the time when no person, however powerful, shall be safe from mob law.

Newspaper reports of crimes have come to serve in many instances a most useful function in leading to the detection of offenders who might otherwise escape. This is a use which we do not seek to destroy. Until such time as the sheriffs and police become discreet and are backed by the bench and the bar so that they can counsel authoritatively in every instance there can be no general rule for the press except that their accounts should at least never go beyond irrefutable facts. In an ideal system the officials would say what facts should be withheld in the interest of justice until they have had time and opportunity to apprehend all suspected persons.

One great trouble with the present license in this field is that the police tend to rely wholly upon publicity to do their detective work for them. There is reason to believe that our detective bureaus are full of politics and their operations are but bumblepuppy. It will not soon be forgotten that in the Cleveland crime survey, intelligence tests were made of all kinds of policemen and the so-called detectives rated lower than any other class. Apparently places on the detective force are awarded not to those of special training and special proclivity, but to those who want a lazy, and possibly lucrative job.

Exposing the State's Witnesses—Akin to the last mentioned evil is the publicity which perverts witnesses. In criminal prosecutions the State's witnesses are the most important of all factors. While this article was in course of preparation an editorial appeared in the Chicago Tribune (Jan. 28) which explains this point better than columns of argument, and which deserves quoting also because it presents an apology by a typical high pressure newspaper:

TIPPING OFF THE GUNMEN

"A youth of 17 saw the shooting of John Torrio Saturday afternoon. Monday he identified George Moran as one of the men who did the shooting. He picked him out of a group of nine. Moran was a friend of Dion O'Bannion, the murdered gang leader. Other persons were given a chance to identify him, but the youth was the only one who would or could, and he stuck to it and to his story of the shooting, although Moran, facing him, seemed to frighten him even in the office of Chief of Detectives Shoemaker.

"The name of the youth and his address were given to the reporters by the police and this was printed in Tuesday's newspaper. Sunday four gangsters drove up to the building in which a witness against two robbers lived and shot the building full of holes, endangering many lives and shooting a young mother. This was to intimidate the victim of the robbery. The police say they have to furnish guards to protect witnesses against gangsters and murderers who seek to silence them, kill them, or drive them out of town. They say in the present case of the Torrio shooting there may be intimidation of the young witness.

"The well organized criminal system might be able to get such information as this concerning a witness without any help from the newspapers. News is news to a capable reporter, and he tries to get it.

The identification of Moran was news, but here in this department we feel that there is a responsibility, both police and newspaper, if witnesses are to be protected against consequences of their courage in helping criminal justice.

"If criminals have ways of finding out what is happening in the office of the chief of detectives that is not our responsibility. If tips are given criminals through this newspaper that is our fault. Intimidation is a part of the crime business. The average person does not care to face the crooks and gunmen and gangsters alone with his name and address known.

"The whole chance of getting results from the young man's story lay in keeping him under cover and the information he gave a secret. Then he would have told his story at the trial. An investigation of this case is being made to discover why the police proceed in this fashion and what the responsibility of the newspaper is. We want news, but not to the advantage of murderers or the detriment of justice."

Before dismissing this point it should be added that, in Chicago, feud crimes for many years have virtually escaped prosecution because the State has no witnesses. Again and again the "dying gunman" stoically refused to divulge the name of his assassin, obeying, as the papers say, the unwritten code of the vendetta. There is no romantic reason for such silence. Fear of retaliation is the only reason and it is a very practical and potent reason. The government cannot protect the innocent. Over one hundred assassinations have occurred at a certain street corner in Chicago and so far as we know there has never been a conviction for one of these crimes. It is no sufficient answer to say that these deaths are good riddance, because in many instances the victims are not criminals and because no system of justice can be respected that tolerates exceptions from the law. Freedom for assassination results in far greater irresponsibility and danger than does "mob law."

Another phase of newspaper license lies in the intimidation of officials. On the one hand an unwise liberality toward the press brings coveted notoriety and political capital, while just as truly a resistance to reporters incurs the risk of unfair treatment of officials which they should not be obliged to endure.

Why Jury Service Is Dreaded—One of the commonest complaints against the press is that publicity makes it difficult, if not almost impossible, to secure a trial jury in the community. We have instances of thousands of talesmen examined to get twelve qualified jurors. These prolonged and costly examinations of talesmen certainly tend as powerfully to illustrate the flabby nature of our criminal procedure in action and to bring the courts into disrespect as any one factor. It is easy to say that newspaper accounts should not lead to the prejudging of the case, but this would often be unavoidable from the very nature of things even though the press published nothing but that which was fact and was authorized. Here we are inclined to lay nine-tenths of the blame on the judicial system. Lawyers yawp about the dangers inherent in the English system of making up a jury in a few minutes and assume that there is no alternative between that expedition and the senseless practice into which we have drifted in many States. There is, if course, a mean course which fully protects the accused in securing a fair trial and yet avoids the scandal common to hard fought criminal trials.

We can hardly look forward to life tenure for all state judges or to arbitrary legislation as a cure for this evil. Rather must we look to a better means of nominating judges, to greater security of tenure, and especially to greater integration of the bar and solidarity of the bench for this reform. Nor is it too early to anticipate that movements already started shall reach this evil and accomplish a long-needed reform.

We are inclined to acquit the press of blame for the alleged difficulty in getting a jury.

We can have no sympathy with the view that individuals free from prejudice to constitute a good and fair-minded jury are

rare in any community of newspaper readers. The obvious reason that the fixed opinion is used to escape jury service is because we have made jury service in celebrated cases insanely onerous. Who can blame sensible men from avoiding such an idiotic service as giving up their freedom, their families, their business and their recreation for a period of weeks with a prospect eventually of a reversal for error in case of conviction? Is it not because sensible men refuse to be parties to such silly procedure that we are brought to a realization of the absolute necessity for reform? Of course the community is full of prospective jurors well qualified and patriotic who are willing to serve under *reasonable* conditions.

Destroying the Presumption of Innocence.—Improper reports of prosecutions and trials are possibly worst when they prejudice the right of the accused to a fair trial and leave him, though eventually found innocent, with a total loss of reputation. On this phase we quote from Mr. Henry W. Taft:[2]

"An intelligent forecast of how a trial will result can seldom be made from an ordinary newspaper account. This is due not alone to inaccuracy of reports, but also to the undue accentuation of sensational, though irrelevant, evidence, to so-called 'stories' padded with matters of more or less remote inference, to unworthy wrangling of counsel, or to equally irrelevant homilies of judges. Industrious reporters interview prospective witnesses and publish what they say. Their statements are without the sanction of an oath and are not subjected to the test of cross-examination. The publication of the names of witnesses entering the grand jury room, with reportorial conjectures as to their statements, make a serious inroad upon the confidential character of the accusing body under our system of criminal procedure. A glaring case of the publication before indictment and before trial of so-called evidence occurred in the Ward case, which led to an inquiry and an abortive attempt to discipline counsel. In the Burch murder case in Los Angeles a newspaper reporter, by eavesdropping methods, secured knowledge of what went on in the jury room and made statements as to how the several votes of the body resulted. Evidence or instructions having the effect of completely neutralizing irrelevant or unimportant matters thus published are either omitted or so subordinated that a misleading picture is presented. The case is, therefore, not presented to the reading public as it is to the judge and to the jury, and where a decision or verdict is rendered contrary to what readers might reasonably expect to some extent the confidence of the public in the judicial process must be impaired.

"A serious result of the practices referred to follows where they tend to destroy the presumption of innocence, which is one of the fundamental principles of our criminal law. Frequently, out of the atmosphere created by the newspapers, a contrary presumption emerges. Thus, the intimate personal life of a person charged with crime is exposed to view, his foibles, or worst failings, are elaborately set forth in readable and newsy form. Misleading headlines make a lasting impression, particularly upon hasty or illiterate readers. Photographic reproductions are published of the accused, of the instruments with which the supposed crime was committed, and of the *locus in quo*, so drawn as to show argumentatively how the crime probably was committed. Such things are presented with far more persuasiveness than could be produced by actual evidence after it had been subjected to the process of cross-examination. In notable cases by this method of newspaper exploitation an accused has been subjected to grievous wrong; and even if he is ultimately acquitted, he is not exempted from having his entire life clouded with a suspicion of guilt"

In the same address Mr. Taft deals with the evil of sentimentalizing on crime and criminals, a thing which is usually present when the other improprieties of newspapers exist.

There is yet another count against the press to which no reference has yet been made so far as the writer is aware. It is far more subtle than the evils that have been discussed and is known by none but lawyers. This consists of the use of the

(2) The Press and the Courts, an address delivered before the Association of the Bar of the City of New York on May 1, 1924.

press by lawyers and firms of lawyers to advance their interests in securing clients and protecting them in the courts. Legal firms entitled otherwise to a very high standing are accused, in whispered utterances, of benefiting secretly from their connections with newspapers. In this matter, as in some others, the blame must rest almost wholly upon the lawyers. Sometimes public interests are prejudicially affected in litigation on which newspapers take sides for the benefit of favored lawyers. Sometimes even the cartoon, that mightiest means for disseminating falsehood and sophistry that has ever been invented, is employed in this service.

More common is the playing up for publicity which the lawyer indulges in in all sorts of trials. Here the bar is seldom deceived though the public does not understand that this is only a means for advertising. In these situations the remedy appears to lie at the door of the bar rather than of the newspaper. An integrated and self-respecting profession could find means to curb this breach of ethics.

What can be done to better our situation?

We believe that a great deal can be done by thinking and talking and writing about these matters.

The first step is for the bar to get acquainted with the subject and to formulate views. Until recently we have had nothing more than the irritation of individual lawyers. The bar must come to realize the universality of this evil, in a sense, for, though only a few newspapers transgress, these papers are usually of large circulation and work their harm throughout a wide radius of territory. The lawyers of the smaller cities, where there is little or no complaint concerning the local press, can assist their brothers of the big centers.

Most important of all, the bar must be as fair as it is critical. It must not shrink from accepting its share of the blame and must put into motion plans looking to a reduction in the large share which lawyers and judges play in the evils complained of.

When the time comes that the bar has established standards of conduct and is able fairly to maintain them it will not find it impossible by any means to curb the bad practices of officials who are not lawyers, notably sheriffs, coroners and police officers. Every local bar association in a large center should have a strong committee on criminology. Such an arm would be a potent means for exerting a needed influence. The bar cannot forever relegate criminal law to the few lawyers who specialize in this field.

A very considerable reform can be had in a brief time by conferences between the local bar association and the judges. It should be an easy matter for the more sensitive in both classes to agree on standards in respect to what should not be done by lawyers and by judges and progress can be made in respect to affirmative action by the bench. It is easy for any judge to make himself respected, but his duty does not stop there. As said recently by an Illinois Supreme Court justice, "We want to make the word judge respected everywhere." The first step obviously is to see that every occupant of the judicial office conducts himself so as to deserve respect. This can be done except in a few places, and in those places a great deal of good can be accomplished in the ways suggested. Only the most erratic judges are careless about the opinion of the conservative element of the profession. That very weakness of the bench, due to our so-called "popular" primaries and elections and short terms, which induces judges to play for newspaper notoriety, may be utilized for reform by a strong bar.

With an agreement on the part of the bar and the bench there are steps which respected judges may well take to instruct the press in respect to its duty and its limitations of power. An analysis of the power of the bench in this field should be made. Meanwhile we should note also that there are strong influences to be brought to bear quite aside from judicial power. The most recreant newspaper men

are amenable to influences of one sort or another. In the cases of most they only need to be instructed. In disagreement with Mr. Casper S. Yost, we believe that there is room here for co-operation between the more responsible members of the bar with the more responsible members of the press, but we cannot assert that the time is yet ripe for such co-operation.

In such a discussion as this it is not enough to point to bad practices; the critics should set up such affirmative standards as they can, though admittedly general in terms. In his address to the Missouri State Bar Association, Missouri Press Association and the University of Missouri School of Journalism, Mr. Guy A. Thompson addressed himself to this side of the subject.[3]

Mr. Thompson dwelt upon three things which the lawyer wishes from the newspaper. We will quote briefly under each heading:

"One of these is the duty of fair and respectful criticism of the courts. The constitutional guarantee of liberty of the press does not endow the newspaper with special privileges. It has no greater rights than the ordinary citizen. While both may differ from the decisions of the courts, and express their dissent, neither may traduce and scandalize and speak contemptuously of the court or of the judge, lest thereby the court be degraded and confidence in its judgments and decrees be destroyed. It is hardly an exaggeration to affirm that our existing social system and our security in the enjoyment of the rights of life, liberty and property, in the final analysis, depend upon the maintenance of the judiciary. And no class is more dependent upon the protection of the courts than is the newspaper. Self-interest, therefore, as well as a sense of duty, should dissuade it from conduct calculated to impair the authority of the courts. As stated by Chief Justice White:

" 'The safeguarding and fructification of free and constitutional institutions is the very basis and mainstay upon which the freedom of the press rests, and that freedom, therefore, does not and cannot be held to include the right virtually to destroy such institutions.' "

(3) Vid. Journal of the American Bar Association. Vol. X, No. 6.

The second duty advanced by Mr. Thompson is the broad one of not deliberately creating sensation:

"In his admirable address on 'The Profession of Journalism,' Mr. Casper S. Yost, the highly esteemed and able editor of the St. Louis Globe-Democrat, in pungent phrase, expressed a thought with which all, upon reflection, must agree He said:

" 'You have to create a publication that will sell in order to create one that will serve.'

"Often, in responding to the urge of this necessity, the newspaper, in dealing with court proceedings, particularly with 'human interest' causes, transgresses the bounds of fair chronicler and becomes, in fact, counsel, jury and judge. But, as Mr. Yost observed in the same address:

" 'Giving the people what they want is a principle that needs to be limited in its application by considerations of decency and public welfare.'

"Failure to observe this limitation gives rise now and then to what Chief Justice Taft has denounced as a 'vicious evil,' namely, trial by newspaper. This term is used to characterize the practice, too frequently indulged in by the newspaper, of trying a case at the bar of public opinion before or while it is tried at the bar of the court."

* * * *

As to the third duty the speaker said:

"The third duty of the newspaper in this connection is suggested by the important relation that the layman sustains to the administration of justice. Every state judge on the bench in Missouri, every prosecuting and circuit attorney in Missouri, however superior and however deficient his equipment, owes his position to the laymen of the State. He occupies his office by virtue of the activity, or as is more frequently the case, the indifference of the layman. The indifference of the layman toward the nomination and election of judges and the selection of prosecuting officials is as manifest as it is deplorable. The fact is that the layman, particularly in the larger cities, has practically abdicated his political duty in this regard in favor of the ward committeeman, whose standards of qualification for the public service are too frequently inadequate.

"Furthermore, all indictments are returned by grand juries, all felony cases and most civil cases at law are tried before and decided by petit juries. In equity cases only, or in law cases in which juries are waived, or in exceptional instances in which verdicts are, for manifest errors, set aside, does the judge alone administer justice. In all other cases, the layman shares with the court and the lawyer the responsibility for the decisions, if, indeed, he does not perform the chief function in the administration of justice. Yet who will deny that it is the whimsical and grotesque verdicts of juries that contribute in large measure to the criticism of the courts and the growing dissatisfaction with the law and its administration? Our juries are no longer representative of our citizenship. For the most part, our men of property, higher education, large business interests, and experience, evade jury duty.

"It comes to this: That the verdicts by juries are more deserving of censure and dissatisfaction than are the opinions of courts. Yet the layman is wholly responsible for the one, and in large measure for the other. For does he not constitute the one and does he not elect or permit the election of the other? Yet these evaders of responsibility and duty are frequently loud and intemperate in their denunciation of the law, the lawyers and the courts"

The fact that the first attempt to establish co-operative relations between the bar associations and the editors' association proved abortive supplies no reason for not pursuing this subject with vigor. Lest the position of the President of the American Newspaper Editors' Association, Mr. Casper S. Yost, be misunderstood, it should be said that he is a type of the thoughtful and constructive class of editors and that he has lent his pen and influence freely and generously in behalf of the better administration of justice. Mr. Yost may be technically correct in taking the position that reform lies in the lawyers reforming their profession and the journalists in reforming theirs. We think that community of effort would be beneficial to both. Certainly it would help the bar if the editors were enlightened as to the precise kinds of unethical conduct indulged in by lawyers which are abetted by the press. It would help if the press were to learn through its own committee of the efforts of the bar to secure legislation necessary to bring about responsibility through self-government. There are also many movements which the organized bar has originated and has promoted with little or no outside assistance which would be a revelation to the editors, which would enlarge their understanding and modify their views as to the legal profession.

We feel that it could do no harm for the editors to learn in definite terms what the better class of lawyers object to.

But President Yost knows the situation in his own association and his judgment must be accepted with confidence that it is founded on the most worthy motives. The editors' association, we understand, is comparatively new. Editors are in the main salaried agents who have not that freedom of expression and action possessed by the other professions. They have a great task in establishing themselves; in their polity conditions must take precedence of theories. It comes with some surprise to lawyers, doubtless, to learn that editors are personally more sensitive than lawyers. Editors are not accustomed to pointed criticism, whereas when Mr. Yost wished to tell lawyers of their shortcomings he had a whole arsenal of critical weapons produced by lawyers to use against them. Doubtless as the organization of the press gains power it will develop self-criticism as have the other professions.

There is one phase that should be mentioned before dismissing this subject and it is a phase which gives encouragement. We should understand that the tidal wave of so-called yellow journalism is receding. We are already a number of years past its crest. This colorful but contemptible thing doubtless had to come in the fullness of time. It is encouraging, as we see it in perspective, to realize that our institutions stood the strain which it imposed. It did harm and to a degree that harm still exists, but for the greater part such excesses carry their own antidote.

We need in these broader aspects of affairs to preserve a sense of humor. When the newspapers become careless about the truth they are themselves in the long run the greatest losers. They disregard the need for accuracy in reporting technical subjects and the public turns to other sources. The influential part of the public are not so soft-headed and easily swayed as might be presumed from the success of frivolous writing. The flagrant abuse of the truth produces a generation of skeptical readers.

The evils inherent in an excess of irresponsible competition are on the wane in the newspaper field. There are not so many papers as there used to be and the cost of establishing a new paper is almost prohibitive. In the days when any disgruntled politician or erratic printer could get a second-hand press and a few fonts of type on terms (we won't say on credit) there was no chance whatever to make journalism a profession. The wild asses could not be kept in a corral. Lest this simile appear offensive, let us add that the bar could not attain professional solidarity as long as any ambitious person could read a few books and set himself up as a lawyer with the sanction of a court. The primary condition for the establishment of a profession is to impose severe entrance qualifications.

INTERSTATE COMMERCE—BRAKEMAN REASSEMBLING INTERSTATE TRAINS

LAWRIE v. ATLANTIC CITY R. CO.

127 Atl. 818

(Supreme Court of New Jersey. February 26, 1925)

Brakeman struck and killed by train while reassembling interstate train, after arrival and discharge of passengers and baggage at destination in state, preparatory to return trip, held engaged in intrastate commerce within Workmen's Compensation Act.

Thompson & Hanstein, of Atlantic City, for prosecutor.

Francis J. McCarthy, of Philadelphia, Pa., and Carleton B. Webb, of Haddonfield, for respondent.

PER CURIAM. Morgan D. Lawrie, the husband of respondent, was in the employ of the prosecutor, as a brakeman on a shifting engine in the yards of the prosecutor at Atlantic City, on August 1, 1920, and while so employed was struck by a train of respondent and killed. At the time, respondent's decedent was engaged in switching, breaking up, and reassembling a train of cars that had made a trip from Camden to Atlantic City, arriving at the latter place at 10:18 a. m. Prosecutor's railroad extends from Atlantic City to Camden, entirely within the State of New Jersey. From the terminal at Camden passengers are carried by ferry to Philadelphia. Tickets are sold and passengers carried by means of ferry and railroad from Philadelphia and other points outside of the State of New Jersey to Atlantic City. Passengers are also carried from Camden to Atlantic City by the same trains. After the operation in which the respondent's decedent was engaged had been completed, the train so made up would have been moved into the passenger station to make its outbound trip scheduled to commence at 2:30 p. m.

Respondent filed her petition for compensation under the Workmen's Compensation Act of this State. P. L. 1911, p. 134, as amended by P. C. 1913, p. 302. It is conceded that at the time of the happening the prosecutor was engaged in interstate commerce, the train which collided with decedent being so engaged in transporting passengers and baggage. The question before the deputy commissioner, sitting and hearing the cause for the compensation bureau, and before the court of common pleas, upon appeal, and likewise here, is: Was respondent's decedent at the time of the happening resulting in his death, engaged in intrastate commerce? Both the deputy commissioner and the court of common pleas held that he was, and we are of the same opinion, basing our conclusion upon the authorities cited and relied upon by the deputy commissioner, namely, Philadelphia & Reading R. R. Co. v. Hancock, 253 U. S. 284, 40 S. Ct. 512, 64 L. Ed. 907; Moran v. Central R. R., 245 U. S. 629, 38 S. Ct. 62, 62 L. Ed. 519; Boyle v. Pennsylvania R. R., 228 F. 266, 142 C. C. A. 558; Illinois Central R. R. v. Behrens, 233 U. S. 473, 34 S. Ct. 646, 58 L. Ed. 1051, Ann. Cas. 1914C, 163; Lehigh Valley R. R. Co. v. Barlow, 244 U. S. 183, 37 S. Ct. 515, 61 L. Ed. 1070; Minneapolis & St. Louis R. R. v. Winters, 242 U. S. 353, 37 S. Ct. 170, 61 L. Ed. 358, Ann. Cas. 1918B, 54. Also, Pennsylvania R. R. v. Knox, 218 F. 748, 134 C. C. A. 426; Thompson, Emp. Liability Act (3d Ed.), § 32, p. 52.

What gave the train upon which decedent was working its interstate character at the time of its arrival at Atlantic City was not the cars and coaches, but the character of the trips of the passengers and baggage. When the train arrived at Atlantic City, its destination, and discharged its passengers and baggage, the cars lost their character as instrumentalities engaged in interstate commerce and did not again resume such character or use, unless or until they later actually became used in transporting passengers and baggage in an interstate journey.

The judgments below are affirmed, with costs.

NOTE—*Employee Breaking Up Train as Engaged in Interstate Commerce.*—The Court of Civil Appeals of Texas, in Southern Pacific Company v. Stephens, 201 S. W. 1076, holds that the work of breaking an interstate train at the junction point, preparatory to sending the cars to their destination at other points within the State, is work in furtherance of interstate commerce.

It is likewise held in Seaboard Air Line R. Co. v. Koennecke, 239 U. S. 352, 36 Sup. Ct. 126, 60 L. Ed. 324, that a railway employee engaged, at the time of his injury in distributing the cars from an interstate train and clearing the track for another interstate train is engaged in interstate commerce.

The case of Davis v. Dowling 284 Fed. 670, holds that a brakeman injured while breaking up a train containing an interstate car is within the protection of the Federal Employers' Liability Act relating to interstate commerce.

In O'Neill v. Sioux City Terminal R. Co., 193 Iowa 41, 186 N. W. 636, it is held that in case of injury to the switchman by a string of cars being moved by a terminal company to local yards, recovery may be had under the Federal statute if one of the cars in the string had come from another State in interstate commerce.

In the case of Erie R. Co. v. Welsh, 89 Ohio St. 81, 105 N. E. 189, the Court says:

"Notwithstanding his employment may have been only local and wholly within the State, yet if, in the course of his service, it became his duty to handle or assist in handling cars engaged in interstate commerce, either by taking them out of or putting them into trains, or shifting them about the various parts of the railway yards, he must be held to have been engaged in interstate commerce while actually so engaged in this service."

BOOK REVIEW

FEDERAL INCOME AND ESTATE TAX LAWS

Messrs. Walter E. Barton and Carroll W. Browning, both members of the Washington, D. C., Bar, have compiled a very valuable and practicable work on the federal income and estate tax laws. Mr. Barton is a well-known practicing attorney, while Mr. Browning is senior cost accountant in the United States Navy Department. The book is published by John Byrne & Company, Washington, D. C. The work is a compilation and annotation of all federal income and estate tax laws since the organization of the Federal Government, and a correlation of such laws since the Sixteenth Amendment. This, the second edition, contains about five hundred and fifty pages and is well bound in buckram.

As showing the scope and serviceability of the work we quote the following from the preface of the present edition:

"The first edition of this work was published in January, 1922, shortly after the enactment of the Revenue Act of 1921. Last June that Act was superseded by the Revenue Act of 1924.

"To date there have been six general Revenue Acts placed on the statute books since 1913. This is an average of one new law for every two years. Each successive Act is more comprehensive and probably more complicated than its predecessor. Under these conditions it is not surprising that the Treasury Department is considerably behind with the audit of returns.

"The present edition includes all of the Federal Income Tax Laws which have been enacted since the foundation of the government. All laws subsequent to the Sixteenth Amendment are correlated and annotated, the same plan being followed as in the first edition. They may be found in Part I.

"The Income Tax Laws prior to the Sixteenth Amendment with annotations are collected in Part II. The Revised Statutes and the provisions of the Constitution of the United States applicable to Federal Taxation, with annotations, are collated in Part III.

"In view of the growing importance of Federal Estate Taxation, the provisions of the Revenue Acts since the Sixteenth Amendment pertaining to Estate Taxation are included. They are correlated and annotated, and may be found beginning on page 344. In order that the entire Revenue Act of 1924 may be available for quick reference, it is also incorporated. The titles other than those pertaining to Income and Estate Taxation may be found beginning on page 384."

"So you've broken your resolution already?"

"I guess it wasn't a resolution. It must have been just an amendment."

DIGEST

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Agriculture**—Signatures to Agreement.—In action to enforce association and marketing agreement which designated committee of 15 to incorporate, but also provided for election by committee of new members in place of those not acting, signing of articles by original 15 held not condition precedent to suit.—Washington Wheat Growers' Ass'n v. Leifer, Wash., 232 Pac. 339.

2. **Assignments**—Actions ex Delicto.—Whether right of action ex delicto is assignable depends on its survivability, and if its nature is such that it would survive to personal representative of party injured, it may be the subject of a valid assignment.—Haymes v. Halliday, Tenn., 268 S. W. 130.

3. **Attachment**—Safe Deposit Box.—Sheriff may be authorized, in aid of attachment, to open safe deposit box rented to debtor, and debtor cannot render ineffectual process of court and defeat creditors by placing his property therein.—Carples v. Cumberland Coal & Iron Co., N. L., 207 N. Y. S. 624.

4. **Attorney and Client**—Subordination of Perjury.—Where defendant, in personal injury action, introduced record showing plaintiff had pleaded guilty to petit larceny, but in fact he had not pleaded guilty and had not been arrested, and plea had been entered without his knowledge by attorney, plaintiff's attorney, by eliciting plaintiff's testimony that he had not pleaded guilty and had never been arrested, with knowledge that record showed entry of plea of guilty, was not guilty of subordination of perjury, alleged as ground for disbarment.—In re Sizer, Mo., 267 S. W. 922.

5.——Attorney's Fees.—Right of attorney to have fee paid by client and to enforce lien at common law or under Code 1907, § 3011, against her share of estate, does not require intervention of equity; such lien following client's portion of funds into whatever court administration is pending.—Ex Parte McLendon, Ala., 102 So. 696.

6. **Bankruptcy** — Automobile Collision.—Allegation in complaint in action for damages from automobile collision that "the defendants" were intoxicated, which is denied in answer, is alone insufficient to show such intoxication as a basis for claim that judgment was for "willful and malicious injuries to the person or property of another," within Bankruptcy Act, § 17, as amended in 1917 (U. S. Comp. St. § 9601), so that defendant was liable on judgment, even after discharge in bankruptcy.—Tippett v. Sylvester, N. J., 127 Atl. 321.

7.——Bank Deposits.—Bank, holder of note, by setting off note against deposit by maker, did not create preference voidable on subsequent bankruptcy of latter.—Hanson v. Citizens State Bank, Minn., 201 N. W. 932.

8.——Conditional Sale.—Under Bankruptcy Act, § 47a (2), as amended June 25, 1910 (Comp. St. § 9631), a trustee is vested with the rights of a judgment creditor as of the date of the filing of the petition, and the fact that conditional sale contracts are listed in the schedule in a voluntary petition does not constitute notice to the trustee which can affect his rights with respect to such contracts.—In re Douglas Lumber Co., U. S. D. C., 2 Fed. (2d) 985.

9.——The court, familiar with value of legal services and having before him character of proceedings in which services were rendered, may pass on reasonableness of such services without further testimony, and is not required to accept stipulation of parties for 10 per cent attorney fees for foreclosure of mortgage as reasonable value of such services.—First Savings Bank & Trust Co. v. Stuppi, U. S. C. C. A., 2 Fed. (2d) 822.

10.——Interest Payments. — Insolvent corporation's payments of interest on note, with knowledge of insolvency and intent to prefer on part of both corporation and creditor, held illegal, under Stock Corporation Law N. Y., § 66, and a recoverable preference.—In re German-American Improvement Co., U. S. D. C., 2 Fed. (2d) 991.

11.——Preference.—Where chattel mortgagee of stock of merchandise accepted mortgage several years after sale to bankrupt and within four months prior to filing of petition, with knowledge of or reasonable cause to believe mortgagor was insolvent, mortgage constituted a "preference."—Schallern Drug Co. v. McCabe, U. S. C. C. A., Fed. (2d) 856.

12.——Reclaiming Trust Funds.—Evidence that funds of one corporation were used in business of another corporation having same officers held insufficient, on bankruptcy of latter, to charge funds in trustee's hands with a trust for benefit of other company.—In re Horigan Supply Co., U. S. C. C. A., 2 Fed. (2d) 791.

13.——Secured Creditors.—Objection to sale of bankrupt's assets by secured creditor on ground of lien on collateral, without making claim against estate, was not proof of claim required to be filed within year of adjudication under Bankruptcy Act, §§ 57a, 57b (Comp. St. § 9641), and there was therefore nothing which could be amended by substituting therefor formal claim for leave to participate as general creditor for excess of claim over Schallern Drug Co. v. McCabe, U. S. C. C. A., 2 Fed. (2d) 856.

14.——State Court's Jurisdiction.—Jurisdiction of state court over property of non-resident debtor in possession of its receiver was not affected by bankruptcy adjudication under petition filed more than four months after receiver acquired possession.—Neely v. McGehee, U. S. C. C. A., 2 Fed. (2d) 853.

15.——Violation of Duty.—In suit by trustee in bankruptcy against bankrupt's president for violation of fiduciary duty, indebtedness due him from bankrupt could not be set off under G. L. c. 232, § 1, as a "mutual debt" or "credit," within Act Cong. July 1, 1898, §§ 68a, 1 (11), being U. S. Comp. St. §§ 9652, 9585, as terms "mutual debts" and "mutual credits" are correlative, and to authorize set-off there must be mutuality or obligation in same right.—Putnam v. Handy, Mass., 146 N. E. 264.

16. **Banks and Banking**—Assessment of Stockholder.—Bank which assessed its stockholder pursuant to Banking Law 1921, § 25a, as added by Pub. Laws Ex. Sess. 1921, c. 56, § 3 (similar to National Banking Act [U. S. Comp. St. § 9767]), to strengthen its impaired capital, held not entitled to personal judgment against stockholder for amount of assessment in excess of sum realized from sale of his entire stock pursuant to section 3; its remedy being restricted to a sale of stockholder's stock.—Elon Banking & Trust Co. v. Burke, N. C., 126 S. E. 163.

17.——Correspondent's Default.—Correspondent of express company, being suitable agent to transmit rubles purchased by plaintiff, became plaintiff's agent when it received and recognized direction of defendant to transfer rubles to foreign savings bank, and defendant was not thereafter responsible for default or negligence of correspondent.—Skopetz v. American Express Co., Mass., 146 N. E. 262.

18.——Director's Liability.—While bank's affairs are managed by board of directors under Rev. Codes 1921, § 6025, when Legislature imposes special duties on individual director, he cannot escape responsibility therefor merely because board as an entity has general management of bank's affairs.—Ex Parte Lockhart, Mont., 232 Pac. 183.

19.——Letter of Credit.—Bank which had issued irrevocable letter of credit providing for payment of draft when accompanied by invoice and negotiable bill of lading, was warranted in payment of draft so accompanied by invoice and bill of lading though buyer had previously notified bank that goods did not comply with requirements of his contract with seller, and had requested bank not to pay draft.—Laudisi v. American Exch. Nat. Bank, N. Y. 146 N. E. 347.

20.——Special Deposit.—Claim for preference against insolvent bank based on transaction amounting to a special deposit does not include right to interest where supervisor's resistance of claim as a preference was not vexatious but was in exercise of reasonable discretion.—Northwest Lumber Co. v. Scandinavian-American Bank, Wash., 231 Pac. 951.

21.——Stockholder's Liability.—(a) A stockholder in a bank chartered under the laws of this State who, with knowledge of the insolvency of the bank, transfers his stock to an irresponsible person, with the intent to avoid the liability of stockholders to depositors in such bank, is not released from such liability by such fraudulent transfer.

(b) Such a transfer is a fraud against both existing and subsequent depositors, and does not exempt a transferring stockholder from liability to subsequent depositors.—Newton v. Bennett, Ga., 126 S. E. 242.

22. **Bills and Notes**—Attorney's Fees.—Stipulation or provision in note that, in action thereon or suit to foreclose mortgage securing payment, holder may recover from maker stipulated, fixed or specified percentage or amount of attorney's fees, is invalid, and does not authorize recovery of attorney's fees in any amount.—Ralston v. Stone, Ore., 232 Pac. 631.

23.——Place of Payment.—Where note does not specify place for payment, makers may pay at place of their residence.—Delaney v. Nelson, Wash., 232 Pac. 292.

24. **Brokers**—Commission.—Where the owner lists real property with a broker at a net price such broker, in the absence of an express contract to that effect, is not entitled to receive as a commission all the selling price in excess of such list price, but is merely entitled to a reasonable commission not exceeding such excess.—Bateman v. Richard, Okla., 232 Pac. 443.

25. **Carriers of Goods**—Foreign Shipments.—The freight charges on a through shipment from a foreign country into the United States are payable at the rate fixed by the tariff schedules published and filed with the Interstate Commerce Commission in money of the United States, regardless of its exchange value in money of the foreign country.—New York & Pennsylvania Co. v. Davis, U. S. D. C., 2 Fed. (2d) 858.

26.——Valuation of Goods.—A shipper's contract consigning goods to the carrier for the consignee, which fixes the value of the goods at less than the price to be paid by the consignee, is presumed to be supported by a valuable consideration, and the burden of showing the contrary is upon the one seeking to invalidate or avoid the contract.—Thomas L. Leedom Co. v. Rosser-Casebeer Furniture Co., Okla., 232 Pac. 405.

27. **Carriers of Live Stock**—Unreasonable Delay.—In action for unreasonable delay in furnishing cars for loading of cattle, whether delay of 30 days in furnishing cars was an "unreasonable delay" which is defined in Sess. Acts 1921, p. 268, as any delay exceeding 24 hours from date cars are required to be furnished shipper for shipping of live stock, and in view of prior car orders which carrier was required to fill first, under Rev. St. 1919, § 9985, held for jury.—Fewel v. St. Louis & S. F. Ry. Co., Mo., 267 S. W. 960.

28. **Carriers of Passengers**—Alighting.—Mere fact that crowd was present, and was boisterous and violet in attempt to board car at place where plaintiff alighted, and that she was injured by their conduct, did not impose liability on carrier.—Dullea v. Boston Elevated Ry. Co., Mass., 146 N. E. 237.

29.——Boarding Car.—Where only slackening of street car's speed at stopping place was while rounding curve, and it had passed stopping place before plaintiff attempted to board it, he did not become a passenger.—Hildebrant v. City and County of San Francisco, Cal., 231 Pac. 1008.

30.——Duty to Passenger.—Common carrier of passengers for hire is bound to use extraordinary care and diligence to protect its passengers in transit from violence or injury by third persons, and when carrier knows of threatened injury to passenger it must take proper precautions to prevent such injury.—Yellow Cab Co. v. Carmichael, Ga., 126 S. E. 269.

31.——"Station" Defined.—A shelter or structure having three sides, but no windows, provided by carrier and used by passengers when awaiting the arrival of cars, held a "station" as respected degree of care to be used by both passenger and carriers.—Wilkinson v. United Railroads of San Francisco, Cal., 232 Pac. 131.

32. **Charities**—Hospital Not Liable.—Public policy requires that a charitable institution maintaining a hospital be held not liable for injuries resulting to patients through the negligence or carelessness of its physicians and nurses, even if the injured person were a pay patient; payment for board, medical services, and nursing in such case going to the general fund to maintain the charity.—D'Amato v. Orange Memorial Hospital, N. J., 127 Atl. 340.

33.——Status of Orderly.—Orderly in charitable hospital while engaged in nursing, acts on own responsibility for negligence like other nurses and doctors; an orderly being a hospital attendant who does general work, while a nurse is one who cares for the sick.—Phillips v. Buffalo General Hospital, N. Y., 146 N. E. 199.

34. **Colleges and Universities**—Malicious Expulsion.—It is proper to state in this connection that a mere mistake of judgment on the part of the school officer in governing his school either as to his duties under the law or as to facts submitted to him, does not make him liable, but it must be shown that he acted in the matter complained of wantonly, willfully or maliciously.—John B. Stetson University v. Hunt, Fla., 102 So. 637.

35. **Commerce**—Local Regulations.—Local regulations as to return allowed natural gas company which transports natural gas in interstate commerce must avoid unreasonable burden on interstate commerce.—People v. Public Service Commission, N. Y., 207 N. Y. S. 600.

36. **Constitutional Law**—Negligent Operation of Automobiles.—Rev. St. 1919, § 4218, providing for assessment of damages for death from negligent operation of automobiles, held not unconstitutional as discriminatory if applicable to privately driven automobiles only, because of subsequently enacted section 4217, imposing penalty for death from negligent operation of automobiles used as public conveyances.—Myers v. Kennedy, Mo., 267 S. W. 810.

37. **Contracts**—Enforcing Agreements.—Where parties to contract have agreed that disputes relative to contract shall be settled by arbitration, courts should enforce their agreement under Arbitration Law, § 3, rather than undertake itself to settle disputes or to narrow the field of arbitral disputes.—S. A. Wenger & C.o v. Propper Silk Hosiery Mills, N. Y., 146 N. E. 203.

38. **Corporations**—Interstate Commerce.—Selling lodge paraphernalia, insignia, and supplies by a corporation of one State to lodges and persons in another State on orders from lodge officers in the latter State is within the protection of the interstate commerce clause of the Constitution of the United States, although the selling corporation retains title to and control of the articles sold.—State v. Knights of Ku Klux Klan, Kan., 232 Pac. 254.

39.——Ownership of Stock.—Shares of stock may be transferred by indorsement and delivery of certificate, and possession of certificate indorsed in blank gives holder all indicia of absolute ownership, and even where certificates have been issued,

transfer may be made without assignment or delivery thereof in any manner appropriate to assignment of choses in action.—Mancini v. Setaro, Cal., 232 Pac. 495.

40.——Receivership.—In absence of insolvency and without dissolution of corporation, circumstances may arise as will justify appointment of temporary receiver, and held, showing that majority stockholder, officer, and director in sole control of corporation had wrongfully made certain payments to himself, and loaned corporate funds to himself and company which he controlled without security, warranted appointment of receiver for adjustment of such matters.—First Nat. Bank v. Fireproof Storage Bldg. Co., Iowa, 202 N. W. 14.

41.——Russian Law.—Unless it is shown that Russian law relating to right of directors of Russian corporation to hold meetings outside Russia is different from law of New York, law of New York will be applied.—Russian Reinsurance Co. v. Stoddard, N. Y., 207 N. Y. S. 574.

42. **Covenants**—Building Restrictions.—The owner of land burdened with restriction limiting its use to residential purposes, cannot justify construction of public garage on street exclusively used for residence, because of changing character of intersecting street on which stores and business establishments have been permitted despite restrictions.—Cassidy v. Kruvant, N. J., 127 Atl. 339.

43. **Factors and Brokers**—Rice Growers' Association.—Contract between rice growers' association and milling company permitting latter to sell rice only with consent of officers of association acting for its members, did not confer on company authority to sell rice of members of association without such consent.—Joy Rice Milling Co. v. Brown, Ark., 268 S. W. 1.

44. **Husband and Wife**—Presumed Gift.—Where husband continued to turn over his earnings to wife without reservation after he found out that she had purchased property in her own name out of her savings therefrom, and that she deposited money to her personal bank account, presumption was that money was gift to her.—Gorrell v. Gorrell, N. J., 127 Atl. 346.

45. **Insurance**—Cancellation.—Plaintiff was in default in the payment of an assessment, had been notified of her delinquency, and payment had been demanded. There was an issue of fact as to whether she had also been notified that the policy had been canceled but would be reinstated if the assessment was paid within 10 days. The trial court declined to make a finding covering this issue. The application of the principle of the law of contracts, which permits one of the parties to treat the contract as at an end for the failure of the other party to perform, does not extend to the policy in question. The business of insurance is quasi public in character, and the State, in the exercise of the police power, has prescribed the manner in which the contract evidenced by the policy may be terminated. The alleged notice was not given pursuant to a majority vote of the board of directors annulling the policy in accordance with the provisions of section 3396, G. S. 1913.—Clark v. Rochester Farmers' Mut. Fire Ins. Co., Minn., 201 N. W. 930.

46.——Change in Beneficiary.—Where life insurance certificate provides method for changing beneficiary, insured may not designate or appoint by will a beneficiary different than that named in certificate.—Hull v. Brotherhood of American Yeomen, Iowa, 202 N. W. 6.

47.——Drivers and Riggers.—Workmen's compensation and employer's liability policy, covering employer under heading "General Trucking," including "drivers, chauffeurs, * * * stablemen, garagemen, * * * and riggers," held not to cover services of one employed as digger and loader of sand.—Pallotta's Case, Mass., 146 N. E. 235.

48.——Homestead.—In action against association insuring only property of members, homestead in wife's name held to be property of husband for purpose of obtaining insurance.—Wisdom v. Farm Property Mut. Ins. Ass'n, Iowa, 202 N. W. 4.

49.——Killed While Assaulting Officer.—Under life insurance providing that, if insured should die in consequence of a violation of law, policy should be void, where he assaulted a deputy marshal, who killed him, insurer was not liable even though killing was not justifiable, and hence pleas were not demurrable because not alleging elements of self-defense.—Hobbs v. Sovereign Camp W. O. W., Ala., 102 So. 625.

50.——Knowledge of Agent.—Knowledge by insurer's agents at time of issuing policy, that insured had no iron safe and refused to purchase one, and their consent that insured take books home at night, and subsequent acceptance by company of premiums, held to constitute waiver of forfeiture of policy for violation of iron safe clause.—Bullard v. Pilot Fire Ins. Co., N. C., 126 S. E. 179.

51.——Loss Payable Clause.—In absence of fraud in insertion of loss payable clause, expressly made part of policy and attached thereto at time of issuance with insured's knowledge, its provisions must be given full force and effect as part of contract, though insured did not examine them.—National Union Fire Ins. Co. v. Avant, Ark., 268 S. W. 20.

52.——Notice of Rescission.—Evidence that insurer sent letter, informing insured of rescission of policy, addressed to insured at employer's place of business, at a time when insured was ill in bed at his home, is insufficient to prove delivery to insured, unless it is first established by independent testimony that delivery of private mail of insured to him at his home by employer was in the usual course of its business.—Stiegler v. Eureka Life Ins. Co., Md., 127 Atl. 397.

53.——Seizure of Automobile.—Seizure and confiscation of an automobile by Canadian officers held confiscation by "municipal, federal or state authorities," within a confiscation bond attached to policy insuring a car while within the limits of Canada as well as the United States; term "federal" being commonly used to express a league or compact between two or more States to become united under one central government, and being properly applicable to the Dominion of Canada; a "State" being a political body or body politic, or the whole body of people united under one government, and the term "municipal" though strictly applying to a city, being commonly used in a much broader sense, to-wit, municipal or civil law, or the rule by which particular districts, communities or nations are governed.—Montana Auto F. Corp. v. British & Fed. Underwriters, Mont., 232 Pac. 198.

54.——Solicitor's Neglect.—Insurer is liable for negligence of its agent in failing properly to forward application for insurance within reasonable time if application would have been accepted by insurer prior to death of applicant but for such negligence.—Dyer v. Missouri State Life Ins. Co., Wash., 232 Pac. 346.

55. **Licenses**—Architect's License.—Under Laws 1919, c. 205, §§ 1, 2, 4, 8 (Rem. Comp. Stat. § 8270 et seq.), contract to render services as architect, entered into by one holding himself out as architect and preparing usual detailed plans and specifications, without having license certificate, is void and unenforceable by himself or assignee, even if building was accepted and approved on completion.—Sherwood v. Wise, Wash., 232 Pac. 309.

56.——Ford Roadster Not "Truck."—Ford roadster with wagon shaped box substituted for tonneau, as distinguished from type designated "truck" by factory, used chiefly for commercial purposes to carry tools and light articles, but no freight, held not a truck, within Pub. Acts 1919, c. 149, § 15, as amended by Pub. Acts 1923, c. 108, providing for registration of automobiles and fixing fees; intent being to distinguish heavy, slow-moving, freight vehicles causing heavy road wear, according to manufacturers' classification, and a "truck" being a strong vehicle for transporting freight, merchandise, and other heavy articles.—Hemlock 6400 Tire Co. v. McLemore, Tenn., 268 S. W. 116.

57. **Municipal Corporations**—Municipal Purpose.—In view of the rule that the authority of municipalities to act and particularly to levy a tax must be made to clearly appear, and that doubts, if any, as to the power sought to be exercised, must be resolved against the municipality, it is not evident that the power to issue bonds to acquire land for an enlarged golf course in the city is included in the charter and general statutory powers of the city to purchase property for public parks and play-

grounds and for any other municipal purpose the city council may deem proper, and to issue bonds for any purpose stated, or for any municipal purpose authorized by the charter or general law; the issuing of bonds to construct a golf course being more in the nature of a corporate than of a governmental function.—City of Bradentown v. State, Fla., 102 So. 556.

58.——Repair of Streets.—Under common law, municipal corporations are liable for damages caused by their negligence in failing to keep streets in repair, but Legislature may exempt them from such liability, and wisdom thereof is no concern of the courts.—Lee v. City of Dallas, Tex., 267 S. W. 1014.

59.——Traffic Regulation.—Ordinance prescribing arbitrary rule that motor vehicles should always and under all circumstances come to a stop before entering certain streets, held inconsistent with C. S. §§ 2601, 2616 (Pub. Laws 1923, c. 255), prescribing speed of motor vehicles approaching an "intersecting highway," which applies to public streets, and hence ordinance was invalid.—State v. Stallings, N. C., 126 S. E. 187.

60. **Navigable Waters**—Right of Railroad to Cross.—The right of a railroad company to construct or operate its railroad across navigable waters is a charter right granted by Laws 1846, c. 216, § 14, and is a public franchise, the exercise of which constitutes a "special franchise," as defined in Tax Law, § 2, subd. 6, and is assessable as such under the Tax Law.—People v. State Tax Commission, N. Y., 146 N. E. 197.

61. **Parent and Child**—Rights of Adopting Parent.—The right of adopting mother, under Workmen's Compensation Act (Vernon's Ann. Civ. St. Supp. 1918, art. 5246—15), to compensation for death of child adopted as a foundling whose parents were unknown, is not affected by non-compliance with Acts 30th Leg. (1907), c. 47, requiring consent of parents; such compliance being manifestly impossible.—McDonald v. Texas Employers' Ins. Ass'n, Tex., 267 S. W. 1074.

62. **Physicians and Surgeons**—Chiropractors.—Chiropractor's treatment of patient for rheumatism held "treatment of a disease" within Code 1923, §§ 2836-2872, 5191, prohibiting persons from engaging in the profession of treating "disease" of human beings without certificate of qualification from the state board of medical examiners, since "chiropractics" has been defined as "a system of healing that treats diseases by manipulation of the spinal column," and since rheumatism is a "disease."—Robinson v. State, Ala., 102 So. 693.

63. **Public Utilities**—Income Tax.—Gas company's federal income tax should be included as operating charge for rate-making purposes, but tax exemption may be considered as part of return in determining adequate rate.—People v. Public Service Commission, N. Y., 207 N. Y. S. 599.

64. **Railroads**—Attachment.—The property of a foreign railroad company operating no line of railroad in this State is not immune to attachment of its property used in interstate commerce, where the plaintiff is a resident of this State and the cause of action against such company is for damages on account of delay in the transportation into this State of a carload of apples, received for shipmen by said railroad company as the initial carrier.—Rosenblet v. Pere Marquette Ry. Co., Minn., 202 N. W. 56.

65. **Sales**—Buyer Not Entitled to Lien.—A purchaser who pays an incumbrance which he had agreed to pay as a part of the purchase price is not entitled to a lien against his vendors for the amount so paid.—Ohman v. Balfany, Minn., 201 N. W. 916.

66.——General Warranty.—Seller's general warranty that machinery will fulfill buyer's requirements carries with it liability for special as well as for general damages.—Fiorito v. Clyde Equipment Co., U. S. C. C. A., 2 Fed. (2d) 807.

67.——Independent Contractor.—Person in possession of automobile under agreement to sell it for owner for commission of amount received over specified price, with no other compensation or allowance for expenses, was independent contractor, and owner was not liable for his collision with another automobile.—Potchasky v. Marshall et al., N. Y., 207 N. Y. S. 562.

68.——Notice of Rejection.—Where an article of personal property was ordered and delivered, and the seller was not within a reasonable time notified of the rejection of the article, but the buyer allowed it to remain where delivered until it became practically worthless, the buyer is liable for the value of the article; and a charge that the buyer should have "immediately" notified the seller of the rejection of the article is harmless error when the evidence shows liability of the buyer.—Curtiss-Bright Ranch Co. v. Cameron & Barkley Co., Fla., 102 So. 495.

69.——Place of Delivery.—As a general rule on a sale f. o. b., the point of shipment is the place of delivery, and at such place title passes from seller at moment of delivery to carrier, and the goods are thereafter at the buyer's risk, but this rule is dependent on intention of parties.—International Co. v. Sun-Maid Raisin Growers, Md., 127 Atl. 393.

70.——Refusal to Accept.—Seller, having option to make deliveries within stated time, is not bound to treat as final any statement by buyer that it will not accept until expiration of such time.—Angelo v. Lamborn, U. S. C. C. A., 2 Fed. (2d) 854.

71.——Unused Material.—Where dealer in boys' clothing agreed to give manufacturer enough work to keep machines busy for certain period, provision that, if contract was not renewed, dealer would buy from manufacturer all trimmings and findings, etc., purchased expressly for garments ordered by dealer, held to apply to merchandise, reasonable in amount, purchased expressly for garments subject to dealer's order and was not limited to merchandise to be applied to garments specifically ordered.—Thuman v. Clawson & Wilson Co., N. Y., 207 N. Y. S. 565.

72. **Search and Seizure**—Drunkenness.—Drunkenness in a public place in violation of Or. L. 2144—1, though in the presence of officers, does not authorize them without arrest or search warrant to search the person for liquor.—State v. McDaniel, Ore., 221 Pac. 965.

73.——Safety Box Warrant.—Warrant issued to federal narcotic agent to search safety deposit box, merely stating that revenue officer had reason to believe that such box was being "used and controlled by (defendant) for unlawful sale and concealment of narcotic drugs," etc., not alleging that any narcotic drugs were in box nor any other fact which would justify search, held void.—State v. Rebasti, Mo., 267 S. W. 858.

74.——Unreasonable Acts.—Search of accused's woodland under void search warrant leading to discovery of liquor, held not a violation of constitutional right against unreasonable searches and seizures guaranteed by Const. art. 2, § 11.—State v. Zugras, Mo., 267 S. W. 804.

75. **Taxation**—United States Bonds.—The imposition of a tax upon United States bonds is beyond the power of the State, and in levying a tax upon the property of a life insurance company the State taxing authorities should deduct from the total valuation the amount of United States bonds included in such valuation.—Farmers' & Bankers' Life Ins. Co. v. Anderson, Kan., 232 Pac. 592.

76. **Workmen's Compensation.**—Hernia as Accidental Injury.—An inguinal hernia, the development of which is caused by overexertion or strain, is an "accidental injury" within the Workmen's Compensation Act and is compensable. It is unimportant in the administration of the law whether from a medical or scientific standpoint hernia is classed as a disease or a malformation or is otherwise designated; nor is it important that the employee is predisposed thereto. The law concerns itself only with the legal cause.—Klika v. Independent School Dist. No. 79, Minn., 202 N. W. 30.